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September 6, 2005

HAND DELIVERY

Honorable Ron Jones, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

**RE: *Petition of Cellco Partnership d/b/a/ Verizon Wireless for Arbitration
Under the Telecommunications Act of 1996
TRA Consolidated Docket No. 03-00585***

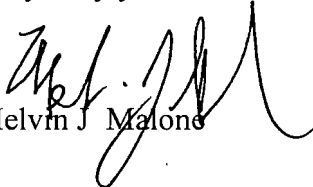
Dear Chairman Jones:

Enclosed please find an original and thirteen (13) copies of the *CMRS Providers' Motion for Clarification* in the above-captioned matter.

The enclosed documents have been served on counsel for the Rural Independent Coalition and other parties of record

Also enclosed is an additional copy to be "Filed Stamped" for our records. If you have any questions or require additional information, please let us know.

Very truly yours,


Melvin J. Malone

MJM cgb

Enclosure

cc. William T. Ramsey
Stephen G. Kraskin
Paul Walters, Jr.
Mark J. Ashby
Edward Phillips
Charles W. McKee
Elaine D. Critides
Dan Menser
Marin Fettman
Leon M. Bloomfield

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**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

Petition of:

**Cellco Partnership d/b/a Verizon
Wireless For Arbitration Under the
Telecommunications Act of 1996**

**Consolidated Docket
No. 03-00585**

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CMRS PROVIDERS' MOTION FOR CLARIFICATION

Petitioners Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"); New Cingular Wireless PCS, LLC ("Cingular Wireless"); Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"); and T-Mobile USA, Inc. ("T-Mobile"), collectively referred to herein as the CMRS Providers, respectfully seek clarification of the Notice of Hearing issued by the Tennessee Regulatory Authority ("Authority" or "TRA") on September 1, 2005. In support of their motion, the CMRS Providers submit the following

1. On August 4, 2005, the Parties jointly filed the "Procedural Schedule for Rate Phase of Proceeding." The jointly prepared procedural schedule (the "Joint Procedural Schedule"), which was adopted by the TRA as the schedule for this phase of the proceeding by order dated August 24, 2005,¹ specifically stated that on September 7, 2005, a hearing would be

¹ Order Establishing Procedural Schedule for Rate Phase of Proceeding, *In Re Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless*, TRA Consolidated Docket No 03-00585 (Aug 24, 2005)

held “before the full panel (Directors Miller and Tate and Chairman Jones) to *argue* all disputed issues raised by the filings of August 11 and 31.” [Emphasis added.]

2. The Joint Procedural Schedule and the Authority’s Order adopting the schedule, however, made no mention of the presentation of witnesses, the submission of oral direct testimony or the cross examination of witnesses at this stage in the proceeding.

3. It was the understanding of the CMRS Providers that only oral argument would be heard at the hearing on September 7. Based on previous discussions among the parties in preparation of the Joint Procedural Schedule and telephone conversations with counsel for the ICOs on September 2, 2005, the CMRS Providers believe that this was also the understanding of the ICOs.

4. On September 1, 2005, the Authority issued a Notice of Hearing which stated, in pertinent part:

The arbitration panel assigned to this docket, Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller, will hear arguments *and testimony* on any disputed issues arising from the parties’ filings of August 11, 2005 and August 31, 2005 regarding the appropriate methodology for TELRIC cost studies. [Emphasis added.]

5. The CMRS Providers hereby seek clarification from the Authority concerning the scope of the September 7 hearing. If the phrase “and testimony” in the Notice of Hearing was meant to provide the Directors and TRA Staff with an opportunity to question the ICOs’ and CMRS Providers’ cost consultants on the proposed cost methodologies, then the CMRS Providers note that they will make their cost consultants available at the hearing, although the

CMRS Providers also note that such questioning was not anticipated at this stage in the proceeding.²

6. If, however, the phrase “and testimony” in the Notice of Hearing was meant to suggest that the parties are to present witnesses for direct oral testimony and cross examination at this time, then the procedure, in the view of the CMRS Providers, would be inconsistent with, and contrary to the express provisions of, the Joint Procedural Schedule which, as discussed above, was adopted by the TRA. Moreover, such a full-blown evidentiary hearing – without adequate notice to the parties – could implicate due process concerns.³

7. The CMRS Providers further note that all direct testimony provided to date in this proceeding has – consistent with general TRA practice – first been provided in written form. No such testimony has been provided with respect to the ICOs’ (or the CMRS Providers’) cost methodology filings *and none was anticipated*. By contrast, such testimony is contemplated at a later stage in this cost phase of the proceeding in the context of actually filed ICO cost studies that have been subjected to the discovery process. See Procedural Schedule (individual cost studies filed by and discovery opens December 14, 2005, direct testimony to be filed on February 14, 2006; rebuttal testimony to be submitted on April 28, 2006).

² The CMRS Providers have been able to arrange for at least two (2) of their cost consultants to attend the hearing on September 7th

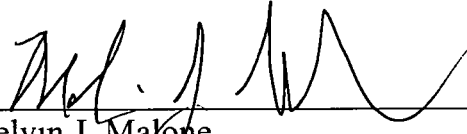
³ See e.g., *Memphis Light, Gas, and Water Division v. Craft*, 436 U.S. 1, 14, 56 L. Ed. 2d 30, 98 S. Ct. 1554 (1978) (“The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending hearing”), *McClellan v. The Board of Regents of the State University and Community College System of Tenn. and Middle Tenn. St. U.*, 921 S.W. 2d 684, 688 (Tenn. 1996) (“The purpose of due process requirements is to notify the individual in advance in order to allow adequate preparation and reduce surprise”), and *Tennessee Consumer Advocate v. Tennessee Regulatory Authority and United Cities Gas Company*, Appeal No. 01A01-9606-BC-00286, LEXIS 148 (Tenn. Ct. App. 1997) (Commission must adhere to “basic principles of fairness”).

8. Moreover, the Joint Procedural Schedule clearly required that on August 11, 2005, “[e]ach Rural Independent Telephone Company will file a description of its proposed TELRIC cost study methodology, specifying in detail how the company proposes to perform the study.” Thus, based on the agreed upon schedule, the only issues to be decided at this stage are whether the cost study methodologies submitted by the ICOs are TELRIC-compliant and if so, whether the ICOs have provided enough specificity on how they intend to “perform” those studies. It is entirely unclear how evidentiary hearings would facilitate the resolution of those issues given the filings already before the TRA. In either event, as discussed above, the imposition of such hearings on what amounts to three-day notice implicates due process issues.

9. As noted above, the CMRS Providers will have cost consultants available to respond to any questions posed by the Directors and/or the TRA staff. It is the CMRS Providers’ continued hope and belief that this preliminary review of cost methodologies will help streamline the process for the ICOs as they prepare TELRIC cost studies for submission by December 7, 2005.⁴ Once those studies have been submitted, discovery is complete and appropriate testimony has been submitted, the hearings scheduled for next spring should provide the TRA with the opportunity to establish final rates for transport and termination, thereby furthering telecommunications competition throughout rural Tennessee.

⁴ As noted in the CMRS filing on August 31, 2005, the CMRS Providers do not hereby waive their rights to raise objections to any cost study ultimately presented that is not based on a forward-looking TELRIC methodology or to otherwise engage in discovery regarding any cost study ultimately submitted by the ICOs

Respectfully submitted this 6th day of September, 2005.



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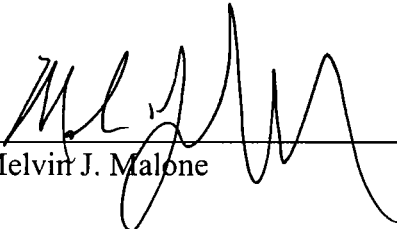
Attorneys for New Cingular Wireless
PCS

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2005, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

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